IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.234 OF 2007
IN
WRIT PETITION NO.3481 OF 2007
ALONG WITH
CIVIL APPLICATION NO.344 OF 2007

Franco-Indian Pharmaceuticals Pvt. Ltd. ... Appellants

Vs.

Franco-Indian Workers' Union ... Respondents

Mr. J.P. Cama, senior counsel with Mr. C.U. Singh i/b M/s. Sanjay Udeshi & Co. for the appellants.

Smt. Gayatri Singh for the respondents.

CORAM : SMT. RANJANA DESAI &
DR.D.Y. CHANDRACHUD, JJ.

DATE ON WHICH THE JUDGMENT RESERVED : 30TH OCTOBER, 2007.

DATE ON WHICH THE JUDGMENT PRONOUNCED : 27TH NOVEMBER, 2007.

JUDGMENT : (Per Smt. Ranjana Desai, J.)

1. The appellants Franco-Indian Pharmaceuticals Pvt. Ltd., (for short, “the Company”) have challenged in this appeal order dated

2/7/2007 passed by the learned Single Judge of this court in Writ Petition No.3481 of 2007.

2. There is no dispute about the fact that there are two Unions in the Company. They are Franco-Indian Workers Union, the respondents herein (for short "the respondent-Union") and Franco-Indian Employees Union (for short, "FIEU"). Both Unions had submitted their charter of demands for revision of wages and service conditions of the workmen. The last settlement signed by the company with the respondent-Union is dated 4/8/1997. The Company has signed settlement with FIEU on 7/6/2002 and made it effective from 1/4/2002 giving rise of Rs.985/- per month to each of the workmen. It appears that majority of the workmen have accepted this settlement. Some are waiting for final Award in Reference (IT) No.67 of 2003, (for convenience, "the Reference") which is pending in the Industrial Tribunal, Mumbai (for short, "the Tribunal") for adjudication of the industrial dispute regarding charter of demands submitted by the respondent-Union.

3. Certain events preceding the filing of Writ Petition No.234 of 2007 need to be stated. It appears that the Company filed an

application for passing Award in terms of settlement dated 7/6/2002 in the Reference proceedings before the Tribunal. The company prayed for disposal of the Reference in terms of the said settlement. That application was rejected by the Tribunal. Writ petition filed challenging the said order was rejected on 6/5/2005 by the learned Single Judge of this court by observing that it is necessary for the Tribunal first to decide whether the said settlement arrived at between the majority of workers and the Company is just and reasonable and if the finding is in the affirmative it should pass the Award and in case if the finding is in the negative then it should consider to proceed with the Reference. The learned Single Judge confirmed the observation of the Tribunal that whether the Award could be passed in terms of the settlement dated 7/6/2002 can be decided only by allowing the parties to lead evidence. While rejecting the petition, a direction was given that the Tribunal while deciding the main Reference shall frame a specific issue as to the justness, fairness and reasonableness of the settlement dated 7/6/2002 and give a finding thereon after allowing the parties to lead evidence. Appeal carried from the said judgment was dismissed on 15/12/2005 by the Division Bench of this court by observing that the said issue cannot

be decided as a preliminary issue because the Reference cannot be permitted to be decided piecemeal. Special Leave Petition filed challenging this order was also dismissed. Therefore, issue regarding justness, fairness and reasonableness of the settlement dated 7/6/2002 has to be decided by the Tribunal.

4. In the meanwhile, the respondent-Union filed an application praying for interim relief pending adjudication of the charter of demands. The respondent-Union prayed for Rs.5000/- per month to each of the workmen from the date of charter of demands as interim relief. The Tribunal by its order dated 18/12/2006 granted an amount of Rs.2,500/- per month to each of the workman covered in the Reference with effect from 1/4/2002 i.e. from the date as per the settlement dated 7/6/2002.

5. It appears that in the meantime, the Company had signed one more settlement with FIEU on 15/4/2006 and by the said settlement a rise of Rs.1,700/- per month was given to the workmen of the FIEU working in the Head Office and the distribution department of the company.

6. The Tribunal's order dated 18/12/2006 was challenged by the company by filing a writ petition. By order dated 8/8/2006, learned Single Judge partly allowed the petition. He quashed the impugned order and remanded the matter to the Industrial Tribunal for fresh hearing in the light of the judgment of the Supreme Court in ***The Management of Hotel Imperial and Its Workmen, AIR 1959 SC 1342.*** The learned Single Judge, however directed the Company to deposit an amount of Rs.500/- per month from December, 2003 for each of the 42 workmen, who had not accepted the settlement dated 7/6/2002. The LPA filed against the said judgment and order was dismissed.

7. The Tribunal then passed interim Award dated 31/1/2007. The Tribunal directed the Company to pay Rs.1,500/- per month to each of the workmen concerned in the Reference as an ad-hoc rise subject to the adjustment in the final outcome of the Reference proceedings from the month of December, 2003 till the final decision in the Reference proceedings.

8. The Company challenged the said order by preferring Writ

Petition No.3481 of 2007. By the impugned order, the learned Single Judge disposed of the Writ Petition by modifying the Award of the Tribunal. The operative part of the order passed by the learned Single Judge may be quoted.

> *"i) The members of the respondent union who are concerned in the present Reference whether working at the factory, Head Office, Distribution office or elsewhere, shall be paid an increase of Rs.985/- per month from 20/12/2003 (the date on which the application for interim relief was filed) upto 31/3/2006.*
>
> *ii) All workers concerned in the Reference whetehr working in the factory, Head Office, Distribution office or elsewhere, shall be entitled to a wage rise of Rs.1500/- per month from 1/4/2006.*
>
> *iii) The aforesaid amount shall be paid to the workmen within one month from today.*
>
> *iv) The amount which has been deposited by the Petitioner in the Industrial Court pursuant to the orders of this court may be withdrawn by the Petitioner after payment of the aforesaid amounts to the workmen concerned in Reference (IT) No.67 of 2003."*

9. We have heard Mr. Cama, learned counsel appearing for the

Appellant-Company. Mr. Cama submitted that this court has directed that reasonableness and fairness of the settlement dated 7/6/2002 has to be decided by allowing the parties to lead evidence. In such circumstances, the learned Single Judge could not have by interim relief granted a relief in the nature of final relief. He submitted that the new settlement dated 15/4/2006 should not have weighed with the learned Single Judge as it has no relevance to the issue involved in the Reference. Mr. Cama contended that increase in settlement dated 7/6/2002 is linked to productivity increase. The Company had offered to extend the benefit of the said settlement to the workmen concerned in the Reference on the terms and conditions contained in the said settlement in regard to productivity. The concerned workmen were, however, not willing to accept that offer. Mr. Cama submitted that, in any event, that settlement has been accepted by overwhelming majority of workmen and, therefore, the Tribunal or the learned Single Judge ought to have at the highest, at this stage, granted interim relief to that extent only because the question of productivity linked increase has to be finally decided. Mr. Cama submitted that, therefore, the impugned order be set aside.

10. Ms. Singh, learned counsel for the respondent-Union submitted that the impugned order merits no interference. She submitted that the Company has signed two settlements with other Union dated 7/6/2002 and 15/4/2006 giving substantial rise in emoluments whereas the workmen represented by the respondent-Union are still governed by settlement of 1997. She submitted that there can hardly be any dispute about the fact that the economic condition of the company is sound. She submitted that considering the rise in the emoluments of the workmen of the other Union, this court may not interfere with the impugned order.

11. In the statement of claim filed by the respondent-Union dated 20/12/2003, the respondent-Union has referred to the settlement dated 7/6/2002 signed by the Company with the other Union and claimed that the rise given to the workmen is meager and all workmen are entitled to higher rise. As stated hereinabove, thereafter, the Company offered to extend the benefit of the settlement dated 7/6/2002 to the workmen concerned in the Reference on the terms and conditions contained in the settlement in regard to productivity. It appears that the workmen were not ready to accept the said offer. They are not ready to accept it even

today. It is seriously contended that Rs.1,500/- per month to the workmen covered under the Reference cannot be granted without laying down any condition in regard to increase in productivity. This question needs to be gone into.

12. So far as the second settlement dated 15/4/2006 is concerned, it appears prima facie that it grants Rs.1,700/- per month to members of FIEU who are working in the Head Office and the Distribution Office.

13. As noticed earlier as per the direction of this Court, issue regarding justness, fairness and reasonableness of the settlement dated 7/6/2002 has to be decided by the Tribunal by allowing the parties to lead evidence. Admittedly, the said settlement has been signed by majority of workmen. By the said settlement rise of Rs.985/- per month is given to each of the workmen.

14. By the second settlement dated 15/4/2006, which has weighed with the learned Single Judge, Rs.1,700/- per month has been granted to members of FIEU who are working in the Head Office and the Distribution Office. Prima facie, therefore, it appears

to us that at this stage, the said benefit could not have been extended to those working in the factory. In our opinion, direction (ii) given by the learned Single Judge to be effect that all workers concerned in the instant Reference whether working in the Factory, Head Office, Distribution Office or elsewhere shall be entitled to a wage rise of Rs.1,500/- per month from 1/4/2006 will result in disparity between the salaries of the workmen concerned in the Reference and majority of the workmen covered by the settlement with the FIEU. Instead, direction (i) given by the learned Single Judge should apply to all the workmen covered by the Reference during its pendency. The fact that the Reference has been directed to be disposed of in a time frame laid down by this court has also weighed with us while coming to the above conclusion. Hence, the following order :

O R D E R

(a) The members of the respondent-Union who are concerned in the Reference whether working at the factory, head office, distribution

office or elsewhere, shall be paid an increase of Rs.985/- per month from 20/12/2003 i.e. the date on which the application for interim relief was filed. The arrears of said amount shall be paid to the workmen, within one month from today.

(b) Needless to say that in the meantime, it shall be open to the workmen to accept settlement dated 7/6/2002 on terms and conditions stated therein. Needless to say that this is only an interim order and nothing said by us in this order should be interpreted as our final expression of opinion on any of the issues involved in the Reference. Industrial Tribunal will deal with the Reference independently and in accordance with law.

(c) The amount which has been deposited by the petitioner in the Industrial Court pursuant to the orders of this court may be withdrawn by

the petitioner after payment of the aforesaid amounts to the workmen concerned in Reference (IT) No.67 of 2003."

15. The letters patent appeal and the civil application are disposed of in the aforestated terms.

[SMT. RANJANA DESAI, J.]

[DR. D.Y.CHANDRACHUD, J.]